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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR RECONSIDERATION

Background

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the modification of WPUP's license for operation at Commerce. No transmitter site change was proposed in the Petition. WPUP currently operates from a transmitter site at North latitude 34° 14' 13", West longitude 83° 16' 03". The P&R Letter refused to process the Petition because there is pending an application (File No. BPH-970818IE) filed by Briarpatch Radio, Inc., the licensee of WDDK(FM), Greensboro, Georgia, to increase power¹ pursuant to Section 73.215 of the Commission's Rules. The P&R Letter indicates that the WDDK application is short-spaced by 4.4 kilometers to the proposed allotment at Commerce. According to the P&R Letter, the fact that the WDDK application predates Southern's Petition entitles the WDDK application to protection from competing proposals. The P&R Letter cites no precedent in support of the action. On the contrary, long-standing Commission precedent requires reconsideration and reversal of the P&R Letter.

Discussion

It should be remembered that Southern's proposal does not involve a change of the WPUP transmitter site. Thus, Southern's Petition creates no adverse impact to the WDDK proposal. In the leading case on this point, *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (Allocations Branch, 1992), the licensee of WMKJ(FM) sought to change its community of license from Newnan to Peachtree City, Georgia, without any change in transmitter site. Over the objections of two Atlanta, Georgia, licensees arguing that the proposed reallocation to Peachtree city would be short-spaced

¹ Although the P&R Letter indicates that the WDDK application seeks 6 kW, the application requests only 5.3 kW.

to a third Atlanta station, the Commission approved the community change. The Commission reiterated:

We have stated that we will consider waiving strict application of Section 73.207 in limited circumstances, provided that no new short spacings are created, no existing short spacings are exacerbated, and the potential for interference between the currently short-spaced stations is not increased.

The Commission cited, with approval, *Eatonton and Sandy Springs, Georgia and Anniston and Lineville, Alabama*, 6 FCC Rcd 6580 (1991), *app. for rev. dismissed*, 12 FCC Rcd 8392 (1997).

In *Newnan and Peachtree City, Georgia, supra*, the Commission indicated that since WMKJ can provide city grade coverage to Peachtree City from its current site, adoption of the proposal would not affect the grandfathered short spacing between Station WMKJ and WKLS and no new short spacings would be created. Since no change in technical facilities was contemplated, the potential for interference did not change, and the Commission allotted Channel 244A to Peachtree City. Like WMKJ, Station WPUP can provide city-grade service to Commerce from its current site, adoption of the proposal would not affect the spacing between WDDK and WPUP, and no new short spacings would be created.

The Chief, Allocations Branch, is bound to follow the WMKJ precedent unless the Commission overrules it. In *Reeder v. FCC*, 865 F.2d 1298 [65 RR 2d 1706] (D.C. Cir. 1989), the Court remanded to the Commission a rule making proceeding where the FCC abandoned its policy without providing adequate notice. The P&R Letter attempts to announce a departure from existing precedent for which no notice

has been given. Therefore, the P&R Letter should be rescinded and Southern's petition should be accepted *nunc pro tunc* and processed as if it had never been found to be unacceptable. Since Southern was unaware that the Chief might consider the WDDK application as a constraint, Southern requests that the Commission waive any rules as may be necessary to permit the Commission to consider and grant Southern's petition.

Alternate Hypothetical Reference Point

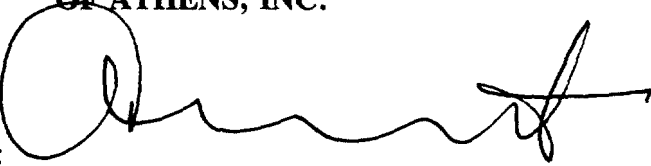
Finally, there is a flaw in the underlying basis upon which the P&R Letter returned Southern's petition, *i.e.*, that WDDK's application was filed prior to Southern's petition and thus is entitled to protection from competing petitions. Southern's petition is *not* mutually exclusive with WDDK's application. WDDK's application specifically protects Southern's facilities for WPUP under Section 73.215 of the Rules. Because there is no transmitter site move proposed toward WDDK, there is no conflict between WDDK and Southern, and no basis to return the Southern petition. If the Chief's purpose in returning Southern's petition was to protect the integrity of the Commission's allotment procedures, no harm will be done by the acceptance of Southern's petition since there is an adequate area where Southern could locate WPUP fully clear of WDDK operating on Channel 280A. Attached hereto is a technical statement that demonstrates this. From an hypothetical reference site of North latitude 34° 15' 58", West longitude 83° 28' 44" a city-grade signal would be placed over Commerce, Georgia, and the allotment would meet all existing constraints including WDDK.

Conclusion

In light of the foregoing, Southern respectfully requests the Chief, Allocations Branch, to reconsider the action he took in the P&R Letter, grant appropriate waivers of the strict application of Section 73.207 as may be necessary, and accept Southern's Petition for Rule Making *nunc pro tunc*. Southern further requests that this matter be handled on an *expedited basis* in view of the delay already occasioned by return of Southern's petition.

Respectfully submitted,

**SOUTHERN BROADCASTING
OF ATHENS, INC.**

By: 

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December 18, 1997

Southern Broadcasting of Athens, Inc.
WPUP (FM)
Royston, Ga. to Commerce, Ga.

December 1997

The following technical exhibit and statement has been prepared of behalf of Southern Broadcasting of Athens, Inc. The purpose is to show the Commissions staff that WPUP (FM) does meet all criteria as set forth in the Federal Communications Commissions rules, related to city of license, in this proposed change to Commerce, Ga.

Exhibit-1 is a visual plot showing the clear-area-to-locate WPUP. This plot shows that this area is substantial with adequate area to locate fully clear of WDDK operating on channel 280A. This plot also shows the 70 dBu (3.16 Mv/M) contour. This exhibit clearly shows that Commerce, Ga. Will be totally encompassed by said contour.

In the original Engineering statement and exhibit, It was clearly stated, and shown, that no relocation of the WPUP transmitting facility was anticipated or proposed, therefore, it is WDDK's responsibility to protect the F 50:50 60 dBu and the F 50:10 54 dBu contour of WPUP. This protection is proposed in the application of WDDK to increase power to 5.3kw ERP under C.F.R. Section 73.215 of the commissions rules.

This Engineering statement and related exhibit is offered to show that there is adequate clear area to relocate the WPUP transmitter facility and fully comply with 47 C.F.R. Section 73.315 (A)&(B) regarding the 70 dBu (3.16 mV/m) contour over the proposed city of license.



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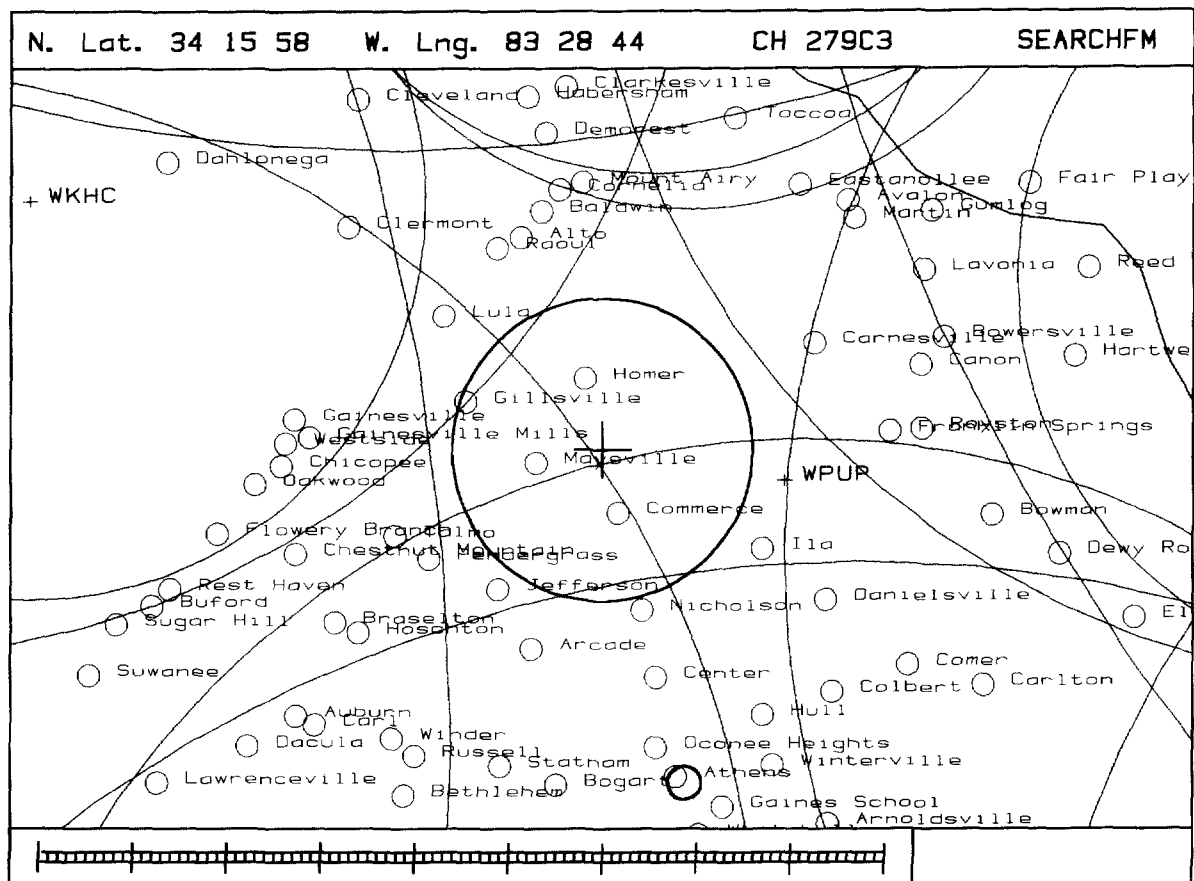


EXHIBIT-1

CLEAR AREA TO LOCATE WPUP WITH 70dBu CONTOUR

Call	CH#	Location		D-KM	Azi	FCC	Margin
WPUP	279C3	Royston	GA	19.75	99.4	153.0	-133.25
WVEE	277C	Atlanta	GA	97.02	234.7	96.0	1.02
WDDK. A	280A	Greensboro	GA	90.39	166.2	89.0	1.39
WDDK	280A	Greensboro	GA	90.39	166.2	89.0	1.39
WPPL	280A	Blue Ridge	GA	102.98	310.7	89.0	13.98
WVKX	279A	Irwinton	GA	156.14	169.9	142.0	14.14
WVKX. A	279A	Irwinton	GA	156.14	169.9	142.0	14.14
WQEN	279C	Gadsden	AL	254.98	262.9	237.0	17.98
WOLI	280A	Easley	SC	108.06	53.6	89.0	19.06
WMTYFM	278C3	Greenwood	SC	118.91	95.2	99.0	19.91
WKHC	282A	Dahlonega	GA	66.23	293.2	42.0	24.23
WRBN	281A	Clayton	GA	67.98	7.9	42.0	25.98
WRBN. C	281A	Clayton	GA	71.29	4.6	42.0	29.29
WIMZFM	278C	Knoxville	TN	208.53	353.9	176.0	32.53
WSOCFM	279C	Charlotte	NC	275.06	65.5	237.0	38.06
WSOCFM	279C	Charlotte	NC	275.06	65.5	237.0	38.06
WRIXFM	276A	Honea Path	SC	88.13	78.1	42.0	46.13
WBBQFM	282C	Augusta	GA	159.60	116.7	96.0	63.60

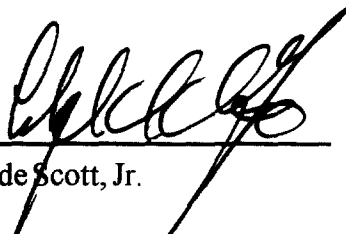
DECLARATION AND QUALIFICATIONS OF PREPARER

State Of Georgia)
City of Moultrie) §
Colquitt County)

Clyde Scott, Jr., under penalty of perjury, declares and says he is a Broadcast Engineer, Technical Consultant, and President of EME Communications. He has been engaged to prepare the attached technical exhibit and related statements.

That his qualifications are a matter of record before the Federal Communications Commission and has been active in the Broadcast industry since 1965 and in Broadcast Engineering since 1972. That he is the holder of General Radiotelephone License No. PG-6-30133.

That the attached Technical exhibit was either prepared by him or under his direct supervision. All material, exhibits, and statements hereto are believed to be true and correct.
executed this 16th day of December, 1997.



Clyde Scott, Jr.

CERTIFICATE OF SERVICE

I, Patricia A. Neil, a secretary in the law offices of Smithwick & Belendiuk, P.C., certify that on this 18th day of December, 1997, copies of the foregoing were hand delivered to the following:

Mr. John Karousos
Chief, Allocations Branch
Federal Communications Commission
Room 554
2000 M Street, N.W.
Washington, D.C. 20554


Patricia A. Neil